

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ELIJAH JEREMIAH WELLONS,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KANIQUE TASHAWN WELLONS,

Respondent-Appellant.

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UNPUBLISHED

July 23, 2009

No. 289607

Oakland Circuit Court

Family Division

LC No. 08-745308-NA

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In the Matter of ELIJAH JEREMIAH WELLONS,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LA'RON DESEAN WELLONS SR.,

Respondent-Appellant.

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No. 290798

Oakland Circuit Court

Family Division

LC No. 08-745308-NA

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

In Docket No. 289607, respondent Kanique Tashawn Wellons (“respondent mother”) appeals as of right from the order terminating her parental rights to the minor child, Elijah, under MCL 712A.19b(3)(b)(ii), (g), (i), (j), and (l). In Docket No. 290798, respondent La’Ron Desean Wellons, Sr. (“respondent father”) appeals as of right from a separate order terminating his parental rights to the same child under MCL 712A.19b(3)(b)(i), (g), (j), (k)(ii), and (l). We affirm.

Elijah was born while termination proceedings were pending with respect to respondent mother's five other children, two of whom were also respondent father's children. The trial court terminated respondents' parental rights to these other children in October 2008. Both respondents appealed the termination order in the prior case and, while their appeals were pending in this Court in Docket Nos. 288648 and 288649,<sup>1</sup> the trial court terminated respondents' parental rights to Elijah, relying in part on its findings and orders in the prior proceeding.

### I. Statutory Grounds for Termination

On appeal, both respondents argue that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error, and may be set aside only if, although there may be evidence to support them, a reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

Respondent mother correctly observes that because the trial court terminated her parental rights to Elijah at the initial dispositional hearing, its decision had to be based on legally admissible evidence. MCR 3.977(E)(3). However, respondent mother expressly approved the trial court's consideration of the entire legal file from the prior proceeding, including the trial testimony, the court's findings, and the orders of termination. Thus, respondent mother waived any error by affirmatively approving the trial court's consideration of this evidence. Reversal may not be premised on an "error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Similarly, in the proceeding involving Elijah, respondent father stipulated to the admission of the trial court's findings of fact regarding the existence of a statutory ground for termination in the prior proceeding. Therefore, it is proper to consider the trial court's findings in the prior proceeding in the context of Elijah's case.

We also note that as part of their arguments in this case, both respondents assert that errors were committed in the prior proceeding, and that the evidence presented at the prior termination hearing did not properly support the trial court's decision in that proceeding. However, those issues are before this Court in Docket Nos. 288648 and 288649. They are not properly before this Court in these appeals, which are limited to the trial court's termination of respondents' parental rights to Elijah.

Turning to the statutory grounds for termination, § 19b(3)(b)(i) is applicable only to respondent father. Termination is appropriate under this subsection if a sibling of the child

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<sup>1</sup> This Court affirmed the termination of respondents' parental rights in Docket Nos. 288648 and 288649 in an opinion issued on June 23, 2009.

suffered physical injury or sexual abuse by a parent, and there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home. In the prior proceeding, the trial court found that respondent father had sexually abused Elijah's sibling. The trial court properly relied on that finding in the present case to conclude that there was a reasonable likelihood that Elijah would be injured if returned to respondent father's care. Thus, the trial court did not clearly err in finding that termination of respondent father's parental rights was appropriate under § 19b(3)(b)(i).

Section 19b(3)(b)(ii) is applicable only to respondent mother. That subsection allows for termination if a sibling of the child suffered physical injury or sexual abuse, a parent had an opportunity to prevent it but failed to do so, and there is a reasonable likelihood that the child would suffer from injury or abuse in the foreseeable future if placed in the parent's home. In the prior case, the trial court found that respondent mother refused to believe that Elijah's sibling had been sexually abused by respondent father, despite her reports of molestation and her diagnosis of having a sexually transmitted disease, and that respondent mother had decided to stand by respondent father rather than protect her child. The trial court properly relied on that finding to conclude that there was a reasonable likelihood that Elijah would be injured or abused if returned to respondent mother's care. The trial court did not clearly err in finding that termination of respondent mother's parental rights was appropriate under § 19b(3)(b)(ii).

The trial court also found that § 19b(3)(g) was established for both respondents. Respondent father was incarcerated when Elijah was born and had never provided care for the child. Respondent mother did not obtain appropriate prenatal care while pregnant with Elijah, which contributed to his contraction of a sexually transmitted disease during childbirth. In addition, respondents failed to provide proper medical and dental care for their other children, respondent father has a lengthy criminal history, and respondent mother has a lengthy Protective Services history. Given this evidence, the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence with respect to both respondents.

Section 19b(3)(i) is applicable only to respondent mother. Considering the evidence that respondent mother's parental rights to five other children were previously terminated because of medical neglect, physical abuse, and her failure to protect her child from sexual abuse, and that respondent mother failed to benefit from services that were provided in the prior case, the trial court did not clearly err in finding that this statutory ground for termination was established by clear and convincing evidence.

The trial court found that § 19b(3)(j) was also established for both respondents. Considering the history of abuse and medical neglect of the older children, respondent mother's failure to obtain prenatal care while pregnant with Elijah, and respondent father's criminal history and respondent mother's Protective Services history, the trial court did not clearly err in finding that there was a reasonable likelihood that Elijah would be harmed if returned to respondents' home. Thus, termination was appropriate under § 19b(3)(j).

Section 19b(3)(k)(ii) is applicable only to respondent father. Given the trial court's determination in the prior proceeding that respondent father had sexually abused Elijah's sibling, and that the abuse included actual or attempted sexual penetration, causing the child to contract a

sexually transmitted disease, the trial court did not clearly err in finding that termination was appropriate under § 19b(3)(k)(ii).

Lastly, the trial court found that § 19b(3)(l) was also established for both respondents. The evidence that both respondents had their parental rights to other children terminated in the prior proceeding clearly supports the trial court's determination that this statutory ground for termination was established in the proceeding involving Elijah.

In sum, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to both respondents.

## II. Best Interests

Respondent mother also argues that the trial court erred in finding that termination of her parental rights was in Elijah's best interests.

Once a statutory ground for termination is established by clear and convincing evidence, the court shall order termination of parental rights if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

All of respondent mother's arguments with respect to this issue relate to her older children, who are not the subjects of this appeal. In any event, considering Elijah's young age and the fact that he had spent nearly all of his life in foster care, and there being no reasonable likelihood that respondent mother would be in a position to provide proper care and custody for Elijah anytime soon, the trial court did not clearly err in finding that termination of respondent mother's parental rights was in Elijah's best interests.

## III. Respondent Father's Claims of Procedural Error

Respondent father argues that the trial court committed several procedural errors by commencing this proceeding without providing him with proper notice or appointing him counsel, contrary to the court rules and his right to due process. We find no merit to these arguments.

The construction and application of a court rule is a question of law that is reviewed de novo. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 133; 624 NW2d 197 (2000). Questions of statutory interpretation are also reviewed de novo, *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996), as are constitutional questions. *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999).

MCR 3.961(A) requires that a child protective proceeding be initiated by a petition "[a]bsent exigent circumstances." MCR 3.963(B)(1) allows a child to be taken into custody pursuant to a court order if the court finds that the child's health, safety, or welfare is in danger, and that remaining in the home would be contrary to the child's welfare. Further, MCR 3.963(C) provides that the party that takes the child into custody must:

(1) immediately attempt to notify the child's parent, guardian, or legal custodian of the protective custody;

(2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;

(3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instructions regarding placement pending preliminary hearing;

(4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place the child pending preliminary hearing;

(5) ensure that the petition is prepared and submitted to the court;

(6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.

Contrary to respondent father's argument, MCR 3.961(A) and MCR 3.963(B)(1) clearly contemplate that, in exigent circumstances, a child may be taken into custody pursuant to a court order before a petition is filed. Under MCR 3.963(C)(5), a petition must then be prepared and submitted to the court.

Nothing in the court rules require that the parents be notified or required to participate in a proceeding that may take place before a court order is issued. Rather, the requirement that a preliminary hearing be held within 24 hours protects the parents' rights and is sufficient to satisfy the due process requirement of notice and an opportunity to be heard. See *Hanlon v Civil Service Comm*, 253 Mich App 710, 723; 660 NW2d 74 (2002).

In the present case, the child was taken from respondent mother's custody on March 26, 2008, pursuant to a court order issued over the telephone. The court order meets the requirements of MCR 3.963(B)(1).

Under MCR 3.963(B)(1), the court issuing an order must find that reasonable efforts have been made to prevent the child's removal. Under MCR 3.965(D)(2), however, reasonable efforts to prevent removal are not required if aggravated circumstances are present under MCL 722.638, which include the sexual abuse of a sibling as happened in this case. Further, reasonable efforts are not required where parental rights to a sibling have been involuntarily terminated.

Respondent mother was given notice of the removal, and she appeared at the preliminary hearing on March 27, 2008. Although respondent father, who was incarcerated at the time, was not immediately notified, the court rule does not require that both parents be so notified. Contrary to what respondent father asserts, the court appointed counsel for him on March 27, 2008, both on the record and by written order. Further, the preliminary hearing was then continued for a week, until April 4, 2008, to allow both attorneys to appear, which is permitted by MCR 3.965(A)(1) (allowing a preliminary hearing to be adjourned for good cause shown) and (B)(1) (allowing an adjournment "for the purpose of securing the appearance of an attorney").

A petition was filed on April 4, 2008, and the parties were given copies of the petition. Efforts were made to allow respondent father to participate in the preliminary hearing by telephone, but the jail did not make him available. However, MCR 3.965(B)(1) provides that a preliminary hearing “may be conducted in the absence of the parent . . . if notice has been given or if the court finds that a reasonable attempt to give notice was made.” Regardless, respondent father’s attorney appeared on his behalf and conditionally waived respondent father’s appearance, and conditionally waived a finding of probable cause.

Although respondent father argues that the trial court erred in conducting a placement hearing instead of a preliminary hearing, as an end-run to the time limits contained in the court rules, as explained previously, the adjournment was proper. Further, placement is one of the matters that must be addressed by the trial court during a preliminary hearing. See MCR 3.965(C).

For these reasons, respondent father has failed to show that the trial court committed any procedural errors or violated respondent-father’s due process rights.

#### IV. Respondent Mother’s Due Process Argument

Respondent mother argues that the trial court violated her right to due process by relying in part on the prior termination proceeding, where she entered a plea that allegedly was not knowing and intelligent because termination had not yet been requested when she entered her plea, and by relying on inadmissible hearsay in this case. We disagree.

Respondent mother’s argument that her plea in the prior case was not knowing, voluntary, and intelligent is an issue before this Court in Docket No. 288648. It is not properly before this Court in this appeal. The same is true of respondent mother’s argument concerning her right to a jury trial, and her contention that the trial court erred by failing to enter a dispositional order in the prior proceeding, and failed to give her an opportunity for rehabilitation.

With regard to respondent mother’s hearsay argument, as previously indicated, respondent mother expressly approved the trial court’s consideration of the challenged evidence in this proceeding. Thus, she is precluded from now arguing on appeal that the trial court’s consideration of that evidence was improper. *Phinney, supra* at 537.

#### VI. Father’s Right to an Appeal

Respondent father lastly argues that the trial court erred when it refused to allow him to pursue an immediate appeal by right from its decision regarding the statutory grounds for termination, before determining whether termination of his parental rights was in the child’s best interests. We disagree.

Respondent father relies on *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993), and accurately argues that the trial court’s exercise of jurisdiction can be challenged only on direct appeal, not by collateral attack after termination. However, respondent father in this case is not challenging the trial court’s exercise of jurisdiction. We agree with respondent father that an order of termination entered at the initial dispositional hearing is a dispositional order, which

is appealable by right. MCR 3.993(A). But an order of termination is not properly entered until after the trial court considers the child's best interests. See MCL 712A.19b(5). Thus, the trial court was required to decide the child's best interests before it could enter an order of termination. Upon entry of such an order, respondent father could appeal that order as of right and, if he chooses, challenge the trial court's findings regarding the statutory grounds for termination, as respondent father has been permitted to do in this appeal. Accordingly, we reject this claim of error.

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra